

LYNCH ICHIDA THOMPSON KIM & HIROTA

TIMOTHY J. HOGAN 5312-0
1132 Bishop Street, Suite 1405
Honolulu, Hawaii 96813
Tel. No. (808) 528-0100
Fax No. (808) 528-4997
E-mail: tjh@loio.com

Attorney for Plaintiff
WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;	)	Civ. No. CV03 00385 SOM-LEK
	)	(Copyright)
Plaintiff,)	
)	
vs.	)	DECLARATION OF TIMOTHY J.
	)	HOGAN IN SUPPORT OF
HAWAIIAN EXPRESS SERVICE,	)	PLAINTIFF WAYNE BERRY’S
INC., a California corporation; et al.	)	AMENDMENT TO MOTION FOR
	)	NEW TRIAL FILED ON 3/21/06 OR
	)	IN THE ALTERNATIVE MOTION
Defendants.	)	FOR RECONSIDERATION AND
	)	RULE 60(b) RELIEF; EXHIBITS 1
	)	TO 10
)	
)	
)	
)	

**DECLARATION OF TIMOTHY J. HOGAN IN SUPPORT OF
PLAINTIFF WAYNE BERRY'S AMENDMENT TO MOTION FOR NEW
TRIAL FILED ON 3/21/06 OR IN THE ALTERNATIVE MOTION FOR
RECONSIDERATION AND RULE 60(b) RELIEF; EXHIBITS 1 TO 10**

I, TIMOTHY J. HOGAN, am an attorney licensed to practice before all the courts of Hawaii and I make this declaration under penalty of perjury. All the statements herein are true and correct to the best of my knowledge, information and belief. If called upon to testify regarding the matters contained herein, I am competent and willing to do so.

1. Attached hereto as Exhibit "1" is a true and correct copy of the jury verdict finding willful infringement dated March 6, 2003.

2. Attached hereto as Exhibit "2" is true and correct copy of an excerpt of the Transcript of Proceeding Before the Honorable Susan Oki Mollway dated March 2, 2006, at page 98 lines 6 to 17.

3. Attached hereto as Exhibit "3" is a true and correct excerpt of an invoice that was authenticated by the Declaration of Lex Smith filed in the first infringement case.

4. Attached hereto as Exhibit "4" is a true and correct excerpt of an invoice that was authenticated by the Declaration of Lex Smith filed in the first infringement case.

5. Attached hereto as Exhibit "5" is a true and correct email from a

deleted directory in the Guidance Before Image files that I obtained from the PCT on January 26, 2006. I spend several hours searching for admissible evidence of the date Brian Christensen became the Hawaii division president starting on or about and I discovered on or about April 5, 2006. I have attempted to recover this email from the files that I received prior to January 26, 2006 but have not been able to. It took me several hours of searching to find this email that is one of several thousands that were produced.

6. Attached hereto as Exhibit “6” is a true and correct copy of an excerpt from Mr. Berry’s opposition to the Employee Defendants’ Motion for Attorneys Fees and Full Costs.

7. Attached hereto as Exhibit “7” is a true and correct excerpt from Defendants Brian Christensen, Mark Dillon, Teresa Noa, Melvin Ponce, Sonia Purdy, Justin Fukumoto, Alfreda Wailoma and Jacqueline Rio’s Reply Memorandum in Support of Their Motion for Attorneys’ Fees and Costs filed on May 4, 2006 at Docket No. 957-1 (the “Reply”).

8. Attached hereto as Exhibit “8” is a true and correct copy of an excerpt from the Transcript of the Deposition of Brian Christensen taken in this proceeding on December 6, 2004 at page 16 line 24 to page 21 line 20 (emphasis added).

9. Attached hereto as Exhibit “9” is a true and correct excerpt of this

Court's January 27, 2005 Order regarding various summary judgment motions.

10. Attached hereto as Exhibit "10" is a true and correct copy of an excerpt from the Defendants Mark Dillon, Brian Christensen, and Teresa Noa's Reply Memorandum in Support of Their Motion for Summary Judgment filed on December 29, 2004 as Docket No. 396. It contains the Affidavit of Lyle Hosoda, Esq. Exhibit "A" that is the portion of the Christensen Deposition transcript where the false statement regarding the date he became the Fleming Division President was made.

Dated: Honolulu, Hawaii May 9, 2006.

/S/Timothy J. Hogan
Timothy J. Hogan